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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,231	01/23/2004	Gerald T. Gourdin	HAU234 CIP2	8493

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EXAMINER
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OH, TAYLOR V

ART UNIT	PAPER NUMBER
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1625

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/13/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,231	<b>Applicant(s)</b> GOURDIN ET AL.	
	<b>Examiner</b> Taylor Victor Oh	<b>Art Unit</b> 1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-19,23-25 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 3 and 20-22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/23/04, 1/23/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Applicant's arguments with respect to claims 1-25 and 30-33 have been considered but are moot in view of the new ground(s) of rejection.

**The Status of claims :**

*Claims 1-25 and 30-33 are pending.*

*Claims 1-2, 4-19, 23-25, and 30-33 are rejected.*

*Claims 3 and 20-22 are objected.*

***Claim Objections***

claims 3 and 20-22 are objected because of the rejected claims.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 30, the phrase "substantially" is recited. This expression is vague and indefinite because the specification does not elaborate what is meant by the phrase "substantially." Therefore, an appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-2, 4-19, 23-25, and 30-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,780,442. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim 1 discloses the two sequential eluting steps and their combining and isolating the fractions so as to obtain a composition enriched in phenolic compounds, whereas the claim 1 of U.S. Patent No. 6,780,442 discloses also the eluting step in order to obtain a composition enriched in phenolic compounds.

However, the instant invention differs from the prior art in that instant claim 1 discloses the two sequential eluting steps and their combining and isolating the fractions so as to obtain a composition enriched in phenolic compounds.

Even so, with respect to the one eluting step vs. the two eluting step, this step is directly related to the optimization of the process; this practice is within the purview of the skilled artisan in the art. Thus, for the purpose of enriching the content of phenolic compounds further, it would have been obvious to the skilled artisan in the art to be motivated to repeat the same eluting step a couple of times the process. This is because the skilled artisan in the art would expect such an operation to be successful and feasible in the prior art process.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated clearly by Ariga et al (US 5,814,494).

Ariga et al discloses the preparation of a dehydrated extract (proanthocyanidin content : 40 %) by extracting grape seeds with hot water followed by dehydration (see

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col. 2 ,lines 17-20). The concentration of proanthocyanins in the proanthocyanidin containing solution is 0.01 to 20 % by weight (see col.1, lines 60-64). This is identical with the claims.

2. Claims 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated clearly by Ariga et al (US 5,773,262).

Ariga et al discloses the concentrated and freeze-dried power having 51.0 % (proanthocyanidin content ) (see col. 3, table 1). The extract liquids containing proanthocyanidins extracted from various plants sources such as grape seeds, skins, cranberries in amount of at least 10 % on dry basis (see col.1, lines 59-67). This is identical with the claims.

3. Claims 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated clearly by Frangi et al (US 5,484,594).

Frangi et al discloses the followings (see col. 2 ,lines 15-21):

*vinifera* grapesceds which contains between 24 and 26% of the dimeric proanthocyanidines B1, B2, B3 and B4, about 15% of the trimeric and tetrameric procyanidol oligomers, the balance consisting of a mixture of oligomeric proanthocyanidines having mean molecular weight of about 2000 corresponding to an oligomer having 7 catechin units.


This is identical with the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taylor Victor Oh whose telephone number is 571-272-0689. The examiner can normally be reached on 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Taylor Victor Oh, MSD, LAC  
Primary Examiner  
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